

Appl. No. 09/881,041

Amendment dated September 25, 2009

Filed in Reply to Decision on Appeal dated July 28, 2009 Pursuant to 37 C.F.R. 41.50(b)(1)

REMARKS

I. Status of Claims

Claims 1-25 are pending. Claims 1, 8 and 15 are independent. By the present Amendment, claim 1 has been amended and claims 8-25 have been canceled without prejudice. Applicants reserve the right to pursue prosecution of claims 8-25 via a continuation application.

II. Rejections Under 35 U.S.C. § 103(a)

The claims 1-7 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,867,821 to Ballantyne et al (hereinafter "Ballantyne") in view of U.S. Patent No. 6,283,761 to Joao (hereinafter "Joao"), and further in view of U.S. Patent No. 5,937,387, to Summerell et al (hereinafter "Summerell"). The Decision on Appeal decided July 28, 2009 (hereinafter "Decision") applied the cited references (e.g., Joao) in a manner different from the Examiner which constituted new grounds of rejection within the meaning of 37 C.F.R. 41.50(b). Applicants respectfully submit that Joao does not teach or suggest the invention recited in claim 1 as amended herein.

On page 19 of the Decision, the Board relies on Joao (i.e., 27:58-67 and 28:38-60 as indicated in the Findings of Fact (FF) 16 on page 11 of the Decision) to purportedly teach the last claim element of claim 1 directed to said computer network being configured with electronic assessment tools to allow a health care provider to assess said patient health-related data to determine progress of the patient on the selected treatment program and whether information-needs to be conveyed to the patient in response to said progress determination.

The text referred to in FF16 (Joao 27:58-67) of the Decision does not mention reports. Thus, the Board relies on the evaluation report in FF16 (Joao 28:38-60) to purportedly teach

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the recited information in the last claim element of claim 1. The text referred to in FF16 (Joao 28:38-60), however, specifically refers to evaluating claims for payment. The evaluation report referred to at Joao 28:49-60 is merely for payment processing and indicates, at most, whether diagnoses and/or treatments are in-line with standards and should be paid or not.

The text at Joao 28:61-29:3 clearly states that a payer receives the evaluation report and not a patient. Applicants respectfully submit that the payer described in FF16 (Joao 28:38-60) is not the same entity as a patient. Even if the payer described in FF16 (Joao 28:38-60) were arguably assumed to be a patient, this assumption appears to be in contradistinction with the rest of Joao that specifically defines “patient” and “payer” as different entities (see, for example the different definitions provided for “patient” and “payer” in Joao at 12:51-57 and at 13:8-19, respectively, and the separate listings of patients and payers in Joao such as at 2:22, 2:58 and 4:11-25.

In addition, Applicants submit that Joao fails to teach “...**determine progress** of the patient on the selected treatment program **and whether** information... **needs to be conveyed** to the patient... **in response to said progress determination**” (emphasis added) as recited in claim 1. Arguably, if an evaluation of report indicates denial of a claim, then the patient will be notified as such (e.g., perhaps by a denial report conveyed to the patient). Even if the evaluation report described in Joao 28:38-60 were arguably provided to a patient, the patient will at most learn that a claim for treatment has been denied or not for payment by the insurance provider. Applicants submit that evaluation of a treatment for insurance coverage is not a determination of progress of a patient on a selected treatment program as claimed. Also, a payer decision to pay a claim or not is not information selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle as recited in claim 1.

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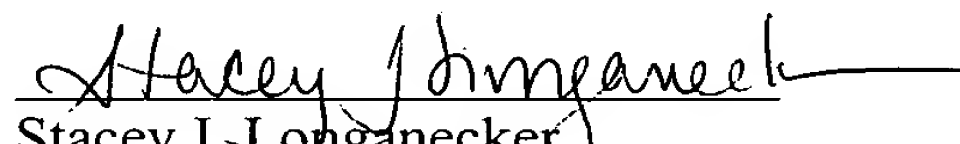
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III. Conclusion

Accordingly, withdrawal of 35 U.S.C. § 103(a) rejection of the claims 1-7 is respectfully requested.

In view of the above, it is believed that the application is in condition for allowance, including claims 1-7, and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



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